Chicago Typographical Union, No. 16 *and* Klaus Beyer and Continental Composition, Inc., Party in Interest/Party to Contract

Chicago Typographical Union, No. 16 *and* Connie Howe and Continental Composition, Inc., Party in Interest/Party to Contract. Cases 13-CB-9664 and 13-CB-9669

9 December 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

Upon charges duly filed, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 13, issued a consolidated complaint and notice of hearing on 16 October 1981, alleging that the Respondent had engaged in, and is engaging in, certain unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the National Labor Relations Act. On 28 October 1981 the Respondent filed an answer denying the commission of unfair labor practices.

Thereafter, the parties entered into a stipulation of facts and jointly moved to transfer this proceeding directly to the Board for findings of fact, conclusions of law, and an order. On 21 May 1982 the Board issued its order accepting the stipulation and transferring the proceedings to the Board. Thereafter, the parties filed briefs and a joint motion to correct the motion to transfer the proceedings to the Board.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record stipulated by the parties and their briefs and hereby makes the following findings and conclusions.

I. THE BUSINESS OF CONTINENTAL COMPOSITION, INC.

Continental Composition, Inc. (Continental) is engaged in the phototypesetting business. Its principal place of business is in Chicago, Illinois. During the past year, Continental performed services valued in excess of $50,000 for enterprises directly engaged in interstate commerce. We find that Continental is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[1] The parties' motion to correct the motion to transfer proceedings is hereby granted.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the Respondent admits, and we find that Chicago Typographical Union, No. 16, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Stipulated Facts*

On 6 August 1981 the Respondent and Continental entered into a collective-bargaining agreement effective from 20 June 1981 to 19 June 1984.[2] The agreement contains the following provision:

> Art. V, Sec. 1(f). Employees covered by this Agreement at the time it becomes effective and who are members of the Union at that time shall be required as a condition of continued employment to remain members in good standing in the Union for the duration of this Agreement.
>
> Employees covered by this Agreement at the time it becomes effective and who are not members of the Union at the time this Agreement becomes effective shall be required as a condition of continued employment to become members of the Union on the forty-fifth (45) day following the commencement of their employment or the date of the execution of this Agreement, whichever is later, and remain members in good standing. *All present employees shall become members of the Union on or before the ratification date of this Agreement.* [Emphasis added.]
>
> The failure of any employee covered hereunder to become and remain a member of the Union in good standing by reason of a refusal to tender the initiation fee (if not already a member) or periodic dues so uniformly required, shall obligate the Employer to discharge such person upon written notice to such effect by the Union.

The agreement was ratified on 6 August 1981.[3]

[2] The collective-bargaining agreement was reached during efforts to settle unfair labor practice charges and an arbitration demand initiated by the Respondent against Continental and Federal Typesetting Company, Inc. in November and December 1980. At that time the Respondent and Union Employers Association, Division of Printing Industry of Illinois Association (UEA), were parties to a collective-bargaining agreement. Federal Typesetting was a member of UEA and thereby a party to the above-mentioned agreement. A dispute arose in October 1980 concerning the alleged transfer of bargaining unit work from Federal Typesetting to Continental and whether Federal Typesetting and Continental were a single employer. In April 1981 the Respondent, Federal Typesetting, and Continental entered into an agreement which, inter alia, provided for the Respondent's withdrawal of its charges against Federal Typesetting. The Respondent's remaining charges against Continental were withdrawn shortly after the execution of the 6 August bargaining agreement.

[3] All dates hereafter shall refer to 1981 unless otherwise specified.

The Respondent posted a notice dated 10 August at Continental informing employees that a collective-bargaining agreement had been executed and that union representatives would explain the agreement at a meeting to be held on 13 August. At the meeting, in response to a question from an employee, a union representative told employees that they were required to join the Respondent and that they could be discharged under the contract if they failed to do so. Employees were given membership applications and instructions at the meeting, and were told the Union would collect the completed applications.

In a 20 August letter the Respondent notified Continental's composing room employees of the requirements of article V, section 1(f) of the collective-bargaining agreement, and that their membership applications and initiation fees were to be submitted by 27 August. A copy of the letter was posted on the bulletin board at Continental. The Respondent also advised Gary Michael, president of Continental, that letters had been sent to employees and that article V, section 1(f) of the agreement would be invoked if the employees failed to tender their membership applications and initiation fees by 27 August.

In a 27 August letter to Michael, with copies to composing room employees, the Respondent requested the discharge of eight employees pursuant to article V, section 1(f) of the bargaining agreement.[4] A copy of the letter was posted on the bulletin board at Continental. By letter dated 4 September, the Respondent informed Michael that employee Dziwak had become a member in good standing, but that the other seven employees named in the 27 August letter had not done so. The letter further stated that employee Klaus Beyer had not been a member in good standing of the Union since March 1981 and requested that Continental take steps to immediately discharge the noncomplying employees.[5]

On 11 September Michael sent letters to employees Beyer, Dorsey, Howe, Locatelli, McLaughlin, and Raines informing them that the Respondent had called about their dues being late and that he would have to discharge them pursuant to the contract if they did not become members in good standing of the Union. In an 11 September letter Michael discharged Schommer for failing to comply with article V, section 1(f) of the contract.[6]

The record shows that employees Dorsey, Dziwak, Howe, Locatelli, McLaughlin, and Raines, Supervisor Azeka, and President Michael executed applications for membership in the Respondent, and for various periods of time tendered periodic dues to the Respondent. By letter dated 11 October Dziwak informed the Respondent that she and employees Dorsey, Howe, Locatelli, McLaughlin, and Raines were putting their dues into a trust fund while matters were pending at the Board.

B. *The Issues and Contentions*

The complaint alleges that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by entering into a collective-bargaining agreement with Continental containing an invalid union-security clause, and by attempting to enforce the invalid union-security clause by, inter alia, threatening to cause the discharge of employees, requesting Continental to discharge certain employees, and causing the discharge of employee Schommer.

The General Counsel contends that the union-security clause is unlawful because it requires all "present" employees of Continental to become members of the Union on or before the ratification date of the agreement, thereby failing to provide employees employed as of the date of the agreement their statutorily required 30-day grace period. The General Counsel argues that Respondent's efforts to enforce the unlawful union-security clause are likewise unlawful.

The Respondent contends that Continental was the alter ego of Federal Typesetting, and that the employer unlawfully disavowed the Respondent-UEA bargaining agreement. The Respondent asserts that its agreement with UEA requires all new employees covered by the contract to become members of the Union after 30 days of continuous employment. It argues that Continental was bound to the UEA agreement by virtue of its status as Federal Typesetting's alter ego, and that all of the Continental employees involved herein had completed 30 days of employment prior to 6 August.

C. *Discussion and Conclusions*

Under Section 8(a)(3) of the Act, a union-security clause must give employees at least 30 days to become union members. This 30-day grace period

[4] The individuals named in the letter were Clazier Dorsey, Linda Dziwak, Connie Howe, Ellen Locatelli, Maureen McLaughlin, Karen Raines, and John Schommer. The letter also named Joan Azeka, a foreman stipulated to be a supervisor within the meaning of the Act.

[5] Beyer, a part-time employee at the Chicago Sun-Times until September 1981, was a member of the Respondent prior to the execution of the 6 August agreement, but had not been tendering dues on his earnings at Continental during that time.

[6] By letter dated 5 October, Schommer was reinstated by Continental. On 6 October the Respondent sent a letter informing Schommer and Michael that it had no objections to the former's reemployment. On 7 October Respondent filed a charge against Continental concerning Schommer's discharge. Continental subsequently entered into a settlement agreement with the Regional Director.

commences with the date the agreement *actually* becomes effective, i.e., the execution date.[7] The union-security clause at issue requires that "present employees shall become members of the Union on or before the ratification date of this Agreement." The parties stipulated that the ratification date referred to in the bargaining agreement is the date the agreement was executed—August. Thus, employees employed by Continental when the agreement was executed were denied their statutory grace period. The clause is therefore unlawful.[8]

Any attempt to enforce the unlawful union-security clause is also violative of the Act. Here, the Respondent countered the employees' failure to comply with the invalid clause by threatening them that it would cause their discharge, requesting Continental to discharge certain employees, and causing Continental to discharge employee Schommer.

Accordingly, we find that the Respondent violated Section 8(b)(1)(A) and (2) of the Act by executing and maintaining a bargaining agreement containing a union-security clause which does not provide employees employed as of the date of the agreement with the statutory 30-day grace period before requiring union membership, and by threatening employees with discharge and causing or attempting to cause Continental to discharge employees for failing to comply with the unlawful union-security clause.[9]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts and conduct of the Respondent described in section III, above, occurring in connection with the operations of Continental described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead, and have led, to labor disputes burdening and obstructing commerce and the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

V. THE REMEDY

Having found that the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, we shall order that it cease and desist therefrom, and take certain affirmative action necessary to effectuate the policies of the Act. In particular, the Respondent shall reimburse employees Clazier Dorsey, Linda Dziwak, Connie Howe, Ellen Locatelli, Maureen McLaughlin, and Karen Raines for any initiation fees, dues, or other moneys unlawfully exacted from them pursuant to the unlawful union-security clause, with interest thereon computed in the manner set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977). See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).[10] The Respondent shall make John Schommer whole for any loss of wages or other benefits he may have suffered by reason of the unlawful discrimination against him from the date of his discharge to the date of his reinstatement by Continental to his former or substantially equivalent position or until he obtains substantially equivalent employment elsewhere.[11]

CONCLUSIONS OF LAW

1. Continental Composition, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Chicago Typographical Union, No. 16, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent, by executing and maintaining a collective-bargaining agreement containing a union-security clause which does not provide employees employed as of the date of the agreement with the statutory 30-day grace period before requiring union membership, and by threatening employees with discharge and causing or attempting to cause the employer to discharge employees for failing to comply with the unlawful union-security clause, has restrained and coerced employees in the exercise of the rights guaranteed them by Section 7 of the Act, thereby engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act, and has attempted to cause, and is attempting to cause, an employer to discriminate against his employees in violation of Section 8(a)(3) of the Act, thereby engaging in unfair labor prac-

[7] *Teamsters Local 70 (Sea-Land)*, 197 NLRB 125 (1972), enfd. 490 F.2d 87 (9th Cir. 1973); *Anderson Express*, 126 NLRB 798 (1960).

[8] We do not find merit in the Respondent's contention that Continental was Federal Typesetting's alter ego and thus was bound to the UEA bargaining agreement. Continental has not been found to be Federal Typesetting's alter ego in any proceeding before the Board nor does the evidence in the instant proceeding establish alter ego status.

[9] Although employee Beyer was a member of the Respondent and therefore not subject to the unlawful portion of the union-security clause pertaining to "present" employees, the Respondent unlawfully attempted to discharge Beyer under the maintenance-of-membership provision of the union-security clause by requiring him to tender dues on pre-6 August earnings at Continental.

[10] We shall not order reimbursement of initiation fees and dues for Joan Azeka, a supervisor, or Klaus Beyer, who did not comply with the Respondent's unlawful demand to tender dues retroactive to March 1981.

[11] Loss of earnings, if any, shall be computed in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest thereon computed in the manner set forth in *Florida Steel Corp.*, supra. See generally *Isis Plumbing Co.*, supra.

tices within the meaning of Section 8(b)(2) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2(6) and (7) of the Act.

ORDER

The National Labor Relations Board orders that the Respondent, Chicago Typographical Union, No. 16, Chicago, Illinois, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Entering into, maintaining, or giving effect to union-security provisions in collective-bargaining agreements with Continental Composition, Inc. which do not provide the statutory 30-day grace period before requiring union membership.

(b) Restraining and coercing employees by threatening to cause Continental Composition, Inc. to discharge them if they fail to join the Respondent and pay dues, unless such membership and dues are required pursuant to an agreement that is authorized by Section 8(a)(3) of the Act.

(c) Causing or attempting to cause Continental Composition, Inc. to discharge or in any other manner discriminate against its employees except as authorized by Section 8(a)(3) of the Act.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the policies of the Act.

(a) Reimburse Clazier Dorsey, Linda Dziwak, Connie Howe, Ellen Locatelli, Maureen McLaughlin, and Karen Raines for any initiation fees, dues, or other moneys unlawfully exacted from them in the manner set forth in the remedy section herein.

(b) Make John Schommer whole for any loss of wages or other benefits he may have suffered by reason of the unlawful discrimination against him in the manner set forth in the remedy section herein.

(c) Post at its offices and meeting rooms copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 13, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for Region 13 signed copies of the notice for posting by Continental Composition, Inc., if willing, in places where notices to employees are customarily posted.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Lbaor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT enter into, maintain, or give effect to union-security provisions in collective-bargaining agreements with Continental Composition, Inc. which do not provide the statutory 30-day grace period before requiring union membership.

WE WILL NOT threaten to cause the discharge of employees for failing to join the Respondent and pay dues pursuant to union-security provisions which do not provide the statutory 30-day grace period before requiring union membership.

WE WILL NOT cause or attempt to cause Continental Composition, Inc. to discharge or in any other manner discriminate against its employees for failing to join the Respondent and pay dues pursuant to union-security provisions which do not provide the statutory 30-day grace period before requiring union membership.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL reimburse Clazier Dorsey, Linda Dziwak, Connie Howe, Ellen Locatelli, Maureen McLaughlin, and Karen Raines for any initiation fees, dues, or other moneys unlawfully exacted from them, with interest.

WE WILL make whole John Schommer for loss of wages and other benefits suffered as a result of the discrimination against him, with interest.

CHICAGO TYPOGRAPHICAL UNION, No. 16